

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. OR MC 19197 through OR MC 19207, OR MC 19209, and OR MC 34451 through OR MC 34454.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: W. Dean Fitzwater, Esq., Portland, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of April 20, 1983, the Oregon State Office, Bureau of Land Management (BLM), declared the unpatented placer mining claims 1/ OR MC 19197 through OR MC 19207, OR MC 19209, and OR MC 34451 through OR MC 34454 abandoned and void because no proof of labor or notice of intention to hold the claims for 1982 was filed with BLM by December 30, 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

H. R. Monroe appeals, stating that proofs of labor were recorded in Baker County, Oregon, on September 30, 1982, and copies of the proofs were transmitted to BLM by ordinary mail October 14, 1982.

There is no record of receipt of the letter or the proofs of labor in the Oregon State Office.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on Federal lands to file a proof of labor or notice of intention to hold the claim both in the local recording office and in the proper office of BLM prior to December 31 of every calendar year. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the claim. As no proof of labor or notice of intention to hold the claims for 1982 was filed timely with BLM, BLM properly deemed the claims to be abandoned and void. J & B Mining Co., 65 IBLA 335 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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1/ The names of the claims are:

High Bar, OR MC 19197  
 Surprise, OR MC 19198  
 Pioneer, OR MC 19199  
 Swan #1, OR MC 19200  
 Blue Bird, OR MC 19201  
 Dove, OR MC 19202  
 White Bird, OR MC 19203  
 Gold Bank, OR MC 19204  
 Golden Horn, OR MC 19205  
 Eagle, OR MC 19206  
 Madre #1, OR MC 19207  
 Yahweh Skippy #1, OR MC 19209  
 White Bird #2, OR MC 34451  
 Swan #2, OR MC 34452  
 Madre #2, OR MC 34453  
 Madre #3, OR MC 34454

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. at 371-72.

Although appellant asserts that the notice of intention was actually mailed to BLM, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the envelope containing the notice of intention to hold was lost by the Postal Service that fact would not excuse appellant's failure to comply with the cited regulations. Hughes Minerals, Inc., 74 IBLA 217 (1983); Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, supra.

BLM has stated that it did not receive the 1982 proofs of labor for these claims. Appellant has not shown anything to the contrary. It must be found, therefore, that BLM was not acting improperly in its decision declaring the claims to be abandoned and void under the provisions of FLPMA.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Will A. Irwin  
Administrative Judge

